

Docket No.: HASH0011U/PCT/US



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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF:  
MATSUMOTO, TAKASHI

GROUP ART UNIT: 2182  
CONFIRMATION NO: 4260

SERIAL NO.: 09/830,588

EXAMINER: CASIANO, A. L.

FILED: 05/09/2001

FOR: Access Method and Recording Medium Having Access Processing Program

ASSISTANT COMMISSIONER FOR PATENTS  
ALEXANDRIA, VA 22313

37 CFR 1.705 APPLICATION FOR PATENT TERM ADJUSTMENT

**I. Statement of the Precise Relief Requested**

The patentee requests that the Director change the notice of term extension under 35 USC 154(b) from 347 days to 454 days due to correct the PTO's erroneous reduction of period of adjustment of 107 days.

**II. Material Facts in Support of the Petition**

1. The Director determined a 347 day patent term extension, as noted on the Notice of Allowance.
2. On May 9, 2001, the applicants filed a US national stage application under 35 USC 371.
3. On October 6, 2003, the examiner mailed a non-final rejection.
4. On January 29, 2004, the examiner mailed a notice of restarted response period.
5. On April 22, 2004, the applicants filed a response to the office action mailed January 29, 2004.

09/21/2004 RFEKADU2 00000129 09830588

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### **III. Reasons Why the Relief Requested Should be Granted**

#### **A. Adjustment Due to PTO Delay**

The term extension applicable under the 35 USC 154 is calculated as follows:

Application filed: May 9, 2001

First response by examiner: October 6, 2003

35 USC 154(b)(1)(A)(i)(II) provides that the term of the patent shall be extended 1 day for each day that the PTO fails to respond with a first office action following 14 months after a filing under 35 USC 371

October 6, 2003 is 454 days following the 14-month period after the filing date of May 9, 2001.

#### **B. Erroneous Reduction of Period of Adjustment by the PTO**

The erroneous reduction of period of adjustment was calculated by the PTO as follows:

PTO mailed the first office action on October 6, 2003

PTO mailed a notice of restarted response period to respond to the first office action on January 29, 2004

Applicant responded to the office action on April 22, 2004

PTO calculated a reduction of period of adjustment of 107 days under 35 USC 154(b)(2)(C)(i) because the response was filed 107 days after the due date of the October 6, 2003 action. However, the PTO mailed a letter **restarting** the period for response on January 29, 2004, which had a due date of April 29, 2004.

#### **C. Why the Reduction was Erroneous**

The reason for the PTO restarting the time was due to the examiner's failure to examine all pending claims in the originally mailed office action, mailed October 6, 2003. That is, the delay was entirely the fault of the Office, and was not any fault on the part of the applicant. Therefore, the response by the applicant on April 22, 2004 was timely, and therefore, there should be no reduction in the period of adjustment of 454 days.

### **IV. Conclusion**

The Director should grant the petition to change the notice of term extension under 35 USC 154(b) from 347 days to 454 days.

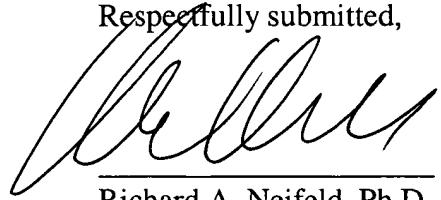
### **V. Fee under 37 CFR 1.18(e)**

A check in the amount of \$200 to cover the fee for filing an application for the patent term adjustment is submitted herewith.

9/22/04

Date

Respectfully submitted,



Richard A. Neifeld, Ph.D.  
Registration No: 35,299  
Attorney of Record

Printed: September 20, 2004 (10:26am)  
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## List of Exhibits

- Exhibit 1: A copy of the USPTO web site's PAIR printout for United States Patent Application Number 09/830,588 showing the dates recorded by the USPTO for filing and mailing of papers in this application.
- Exhibit 2: A copy of the cover page and the office action summary for the office action in United States Patent Application Number 09/830,588 that was mailed on October 6, 2003.
- Exhibit 3: A copy of the cover page and the office action summary for the notice of restarted response period in United States Patent Application Number 09/830,588 that was mailed on January 29, 2004.



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Exhibit 1

**PATENT APPLICATION INFORMATION RETRIEVAL****PAIR****FAQ****Help****Feedback****Other Links****E-Business Center Patents****Employee Locator****Class/Subclass GAU Information****Information Contacts**[Printer Friendly Version](#)**Patent Term Adjustment (PTA) for application number:  
09/830,588**

			Days
Filing or 371(c) Date:	05-09-2001	USPTO Delay (PTO):	454
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	107
Post-Issue Petitions (days):	+0	Total PTA:	347
USPTO Adjustment (days):	+0	Explanation of Calculations	

Select Search Option

 Assignments Display References File History Foreign Priority Image File Wrapper Publication Review

<b>Patent Term Adjustment History</b>			
Date	Contents Description	PTO (days)	APPL (days)
08-04-2004	Mail Notice of Allowance		
08-02-2004	Issue Revision Completed		
08-02-2004	Notice of Allowance Data Verification Completed		
08-02-2004	Notice of Allowability		
05-25-2004	Date Forwarded to Examiner		
04-22-2004	Response after Non-Final Action		107
04-22-2004	Workflow Incoming amendment IFW		
01-29-2004	Mail Notice of Restarted Response Period		
01-26-2004	Letter Restarting Period for Response (i.e. Letter re: References)		
12-04-2003	Miscellaneous Incoming Letter		
10-06-2003	Mail Non-Final Rejection	454	
09-29-2003	Non-Final Rejection		
04-09-2003	Case Docketed to Examiner in GAU		
01-18-2002	Case Docketed to Examiner in GAU		
01-14-2002	Case Docketed to Examiner in GAU		
09-06-2001	Information Disclosure Statement (IDS) Filed		
07-13-2001	Case Docketed to Examiner in GAU		
06-21-2001	Application Dispatched from OIPE		
06-16-2001	IFW Scan & PACR Auto Security Review		

06-07-2001	Released to OIPE	
06-07-2001	Notice of DO/EO Acceptance Mailed	
06-06-2001	371 Application Preexamination Docketing	
06-01-2001	371 Application Preexamination Docketing	
05-09-2001	Receipt of 371 Request	
06-01-2001	Correspondence Address Change	
05-09-2001	Initial Exam Team nn	

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# Exhibit 2

## UNITED STATES PATENT AND TRADEMARK OFFICE

10-2-03  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,588	05/09/2001	Takashi Matsumoto	HASH0011UPCTUS	4260
31518	7590	10/06/2003		EXAMINER
				CASIANO, ANGEL L
			ART UNIT	PAPER NUMBER
			2182	

DATE MAILED: 10/06/2003

Response Due 1-6-04

Response Reminder 12-6-03

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/830,588	<b>Applicant(s)</b> MATSUMOTO, TAKASHI
<b>Examiner</b> Angel L. Casiano	<b>Art Unit</b> 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 09 May 2001.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 09 May 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .      6)  Other:

BS  
1/30/01  
CB



# Exhibit 3

## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,588	05/09/2001	Takashi Matsumoto	HASH0011UPCTUS	4260
31518	7590	01/29/2004		EXAMINER
NEIFELD IP LAW, PC 2001 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202			CASIANO, ANGEL L	
			ART UNIT	PAPER NUMBER
			2182	

DATE MAILED: 01/29/2004  
RESPONSE DUE: 4/29/04  
REMINDER: 3/29/04  
LAST DAY TO FILE: 7/29/04

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/830,588	Applicant(s)	MATSUMOTO, TAKASHI
Examiner	Angel L. Casiano	Art Unit	2182

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 09 May 2001.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.  
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 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Fritz M. Fleming*  
 FRITZ FLEMING  
 PRIMARY EXAMINER  
 GROUP 2100

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .  
 4) Interview Summary (PTO-413) Paper No(s). 7 .  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other:



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<b>NEIFELD IP LAW, PC</b> 2001 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202				CASIANO, ANGEL L
ART UNIT		PAPER NUMBER		
2182				

DATE MAILED: 08/04/2004

**Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**  
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 347 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 347 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

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